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March 4, 2019

VIA EMAIL ONLY

Lisa Fernandez

Digital Reporter/Producer

KTVU

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Re: California Public Records Act Request, dated January 17, 2019

Dear Ms. Fernandez:

On behalf of the City of Gilroy ("City"), this letter is a supplemental response to your request made pursuant to the California Public Records Act ("PRA") under Government Code Section 6250 et seq. and the Gilroy Open Government Ordinance ("OGO"), under Gilroy City Code, Chapter 17A, received by the City on January 17, 2019. On February 7, 2019, the City provided a timely, written response to your PRA request, in accordance with Government Code section 6253, and OGO section 17A.25. This letter asserts further exemptions from disclosure of records related to your request.

Records Related to an Incident that is the Subject of an Active Administrative Investigation

California Penal Code section 832.7(b)(7)(C) states: "During an administrative investigation into an incident described in subparagraph (A) of paragraph (1), the agency may delay the disclosure of records or information until the investigating agency determines whether the use of force violated a law or agency policy, but no longer than 180 days after the date of the employing agency's discovery of the use of force, or allegation of use of force, by a person authorized to initiate an investigation, or 30 days after the close of any criminal investigation related to the peace officer or custodial officer's use of force, whichever is later."

Here, pursuant to California Penal Code section 832.7, subdivision (b)(7)(C), any and all responsive public records related to an incident involving discharge of a firearm at a person by a peace officer or custodial officer, or in which the use of force by a peace officer or custodial officer against a person resulted in death or in great bodily injury, related to an incident that is the subject of an ongoing administrative investigation, where 30 days has not passed since the close of the related criminal

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investigation of the officer's use of force, will be withheld until 30 days after the close of that criminal investigation. (Gov't Code §§ 6254(k) and 832.7(b)(7)(C); OGO § 17A.27.)

Weighing and Balancing the Public Interest

California Government Code section 6255 provides the City the authority to justify withholding any record "that on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record." Here, responsive public records that pre-date 2019 are withheld under this section, because application of SB 1421 requires further guidance from either the courts or the Legislature.

Several cases currently pending in the California superior courts continue to raise the issue whether SB 1421 requires the disclosure of records relating to conduct occurring before January 1, 2019, which is the effective date of SB 1421. Until the legal question of retroactive application of the statute is resolved by the courts or the Legislature, the public interest in accessing these records is clearly outweighed by the public's interest in protecting privacy rights. (Gov't Code § 6255.) Therefore, we will not disclose any responsive public records that pre-date January 1, 2019, at this time.

To the extent that the City has provided responsive and non-privileged public records and/or information the City maintains and has in its possession, your PRA request has been satisfied. If there are other public records you wish to review under the PRA that are not covered by the City's response, please clarify your request. Records in response to your clarified request, if they exist and are subject to disclosure under the PRA, will be made available. If you have further information or authority which you believe would require disclosure of additional records under the PRA, I would be happy to review that information and/or authority.

Very truly yours,

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JH

cc: Shawna Freels, City Clerk  
Scot Smithee, Police Chief  
LeeAnn McPhillips, Human Resources Director/Risk Manager